HIGH COURT OF UTTARANCHAL AT NAINTIAL.

Second Appeal No. 207 of 2001

1. State of U.P., Now State of Uttaranchal, Through the Superintendent of works Department, Construction Unit, P.W.D. Now Executive Engineer, Construction, Division- II, P.W.D. Jaunpur. **Appellant.**

Versus

1. Sri Akhil Kumar Gupta, Sole Proprietor of M/s Akhil Lime Minerals, 90 Raja Road, Dehradun, Through Registered Attorney, Sh. Sunil Kumar.
2. Sh. M.N. Pandey, Junior Engineer C/o Executive Engineer, Construction Division, U.P. P.W.D. Roberts Ganj, District- Sonbhadra U.P. … **Respondents.**

Sri Nand Prasad, learned Standing Counsel for the appellant.
Sri M.S.Tyagi, learned counsel for the respondent no. 1.
Mrs. Beena Pande, learned Standing Counsel for U.P.Govt.

Date May 04, 2006.

Hon. B.S. Verma, J.

Heard learned counsel for the parties.

This Second Appeal is directed against the judgment and decree dated 2-5-2000 passed by the then Additional Civil Judge-IV (Senior Division) Dehradun in Civil Appeal No. 32 of 1998, Akhil Kumar Gupta Vs. State of U.P. through Superintendent of Works Department, Construction Unit, P.W.D., Jaunpur and another, whereby the appeal of the respondent no. 1 was allowed and the money suit of the plaintiff-respondent no.1 was decreed against the defendants.

Relevant facts of the case are that the respondent no. 1-plaintiff filed Original Suit No. 534 of 1991 against the defendant-State of U.P. through Superintendent of Works Department, Construction Unit, now Executive Engineer, Construction Division II, P.W.D. Jaunpur for recovery for Rs. 23,649.33 P. According to

the plaintiff he was engaged in business to supply lime and he supplied lime to the defendant as per supply order dated 18-10-1988. When the payment was not made by the Department, the plaintiff filed the suit for recovery of Rs. 23,649.33 P. as well as interest @ 24% per annum at monthly rest before the Civil Judge (Junior Division) Dehradun. However, the trial court partly decreed the suit for recovery of Rs. 600/- as unloading charges, Rs. 150/- as notice charges and interest @ 24% on unloading charges with monthly rests against the defendant no. 1 and for recovery of Rs. 14,504.33 along with interest @ 6% per annum from 18-12-1988 till payment and Rs. 150/-as notice charges against defendant no.2 ex-parte as mentioned in the impugned judgment and decree dated 4.4.1998. Aggrieved, the plaintiff-respondent no.1 went up in appeal, which was ultimately allowed for recovery of Rs. 23, 649. 33 P. along with interest @ 18% per annum w.e.f. 9.11.1991 against the defendants. Accordingly, the Civil Appeal No. 32 of 1998 was decreed as mentioned earlier. It may be noted that the appellate court after considering the provisions of Sections 4 and 5 of the Interest of Delayed Payments to Small Scale and Ancillary Industrial Undertaking Act, 1993 held that the plaintiff would also be entitled for interest at the rate of 18% per annum.

This appeal has been filed by the State of Uttaranchal after creation of the Uttaranchal State. The decree was passed by the Courts below, i.e. the trial court and the appellate court prior to the creation of the Uttaranchal State. Before creation of the Uttaranchal State, the Law Department of the Government of Uttar Pradesh granted sanction in favour of the Chief Standing Counsel, Allahabad High Court to file the appeal on 28-2-2001 and this appeal has been filed by the then Standing Counsel of the State of Uttaranchal Sri N.B.Tiwari before this Court on 21-6-2001. Thus, the appeal filed on behalf of the State of Uttaranchal is incompetent. Moreover, there is inordinate delay in filing the appeal.

Even otherwise, the only substantial question of law as has been framed in the memo of appeal is whether the Appellate Court had committed illegality in applying the provisions of the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 (***for short the Act***).

The Act applies to the small-scale industries and ancillary Undertakings Act and the interest @ 18% per annum has been awarded as per provisions of Section 5 of the said Act which provides that ***"notwithstanding anything contained in any agreement between a supplier and a buyer or in any law for the time being in force, the buyer shall be liable to pay compound interest (with monthly rests) at the rate mentioned in section 4 on the amount due to the supplier."*** It is pertinent to note that the appellant no.1 appeared before the appellate court but the State did not file any objection before the appellate court to contest the appeal. Moreover, the defendant-appellant no. 2 did not put in appearance before the appellate court despite sufficient service. The appellate court has awarded the interest @ 18% per annum. In the circumstances of the case, award of interest @ 18% per annum is proper and just in view of the provisions of Section 4 and 5 of the Act. The said substantial question of law is answered against the appellant. The appellate court has not committed any manifest error of law on this score. The appeal has no merit and the same is liable to be dismissed in-limine at the admission stage on merit and also being barred by time, for which sufficient cause for condoning the delay has not been shown.

There is no force in the Second Appeal. Accordingly the appeal is also dismissed at admission stage as well as being incompetent.

(B.S. Verma, J.)

M.K.